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In the

Supreme Court of the United States

In Equity

October Term, 1934

No. [redacted] ORIGINAL 5

THE STATE OF NEBRASKA, *Complainant*,

vs.

THE STATE OF WYOMING, *Defendant*.

ANSWER TO BILL OF COMPLAINT

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CAPITOL PIONEER-CHIEF PRESS

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No. 16, ORIGINAL

THE STATE OF NEBRASKA, *Complainant*,

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THE STATE OF WYOMING, *Defendant*.

ANSWER TO BILL OF COMPLAINT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I.

FIRST DEFENSE

Comes now the above named defendant, the State of Wyoming, and, for its first defense to the Bill of Complaint filed in the above entitled cause, alleges:

1. That the complainant herein has had full knowledge and notice of all of the facts, acts and conditions by it alleged in its Bill of Complaint and of the method and policy of the defendant in the administration of the laws of the defendant and of the application of the laws of defendant to the use of water appropriated pursuant to such laws for a period of twenty-five years or more.

2. That with such full knowledge and notice on its part the complainant has, without taking any action to prevent the same, permitted the defendant, for such period of twenty-five years or more, to administer and divide the waters of the North Platte River and its tributaries in the State of Wyoming, pursuant to the well known and established policy of said defendant and its interpretation of its laws and rules and policy of administering and dividing the waters of said river in accordance therewith, and with the full knowledge that pursuant to such course of conduct and method of dividing and administering the waters of said North Platte River, said complainant has permitted said defendant to allow appropriations of water and make adjudication thereof and has permitted the use of such waters pursuant to such appropriations and adjudications for the irrigation of lands within the State of Wyoming and within the State of Nebraska, and such appropriations and adjudications and use have continued in full force, effect and operation for periods of from five to twenty-five years or more, all with full notice and knowledge on the part of said complainant, and all without the said complainant taking any steps to prevent such course of procedure and to secure any other or different method of adjudication, appropriation and use of said waters through the intervention of any Court.

3. That the persons, associations and corporations who have secured appropriations and adjudications of the use of water from the North Platte River and who have used such waters during said periods of time have expended large sums of money and have developed thousands of acres of land and applied the waters so appropriated and adjudicated to the irrigation and reclaimation of such land and have developed such land and cultivated the same and produced valuable crops annually upon same, and they are entirely dependent upon the use of such water for the production of such crops and the use of their land and the improvements thereon made, and that such course of conduct, expenditure of money and development of said lands have all been made, and such water has been used with the full knowledge and notice thereof upon the part of the complainant.

4. That the said complainant, in commencing and maintaining this suit, is so doing only in representing private interests of residents of the State of Nebraska; that said complainant is not an appropriator or user of water from the North Platte River

and does not own or have any water rights which are involved in this suit.

5. That all persons, associations of persons, corporations and organizations in the State of Nebraska, which said complaint represents or purports to represent, and each of them, at the time of making filings for the purpose of appropriating water from the North Platte River, knew and had full knowledge and notice of all prior appropriations and the use of water by prior appropriators in the State of Wyoming at the time each appropriation was made and also had notice of the manner in which the defendant administers the use of the waters of the North Platte River under its laws and of the manner in which it distributes such water for use and made each respective appropriation subject thereto, and each and every such appropriator likewise had full knowledge and notice of the use of such water and of the development and improvement of lands in the State of Wyoming and of the production of crops thereon, all as hereinbefore stated; that none of said appropriators have taken any steps to prevent the course of procedure which has at all times heretofore been followed by the defendant or to secure any other or different method of adjudication, appropriation and use of the waters of the North Platte River or any other or different method of dividing the waters of said river as between appropriators in the State of Nebraska and appropriators in the State of Wyoming through the intervention of any Court and prior to the commencement of this action, but they have at all times recognized and abided by the administration, adjudication, use and division of said waters, as made, directed and required by the defendant.

6. That by reason of the foregoing facts and the full knowledge and notice thereof upon the part of the complainant and upon the part of those whom the complainant represents or purports to represent, said complainant is barred by the statutes of limitations of both the State of Nebraska and the State of Wyoming and by its laches from maintaining this suit.

II.

SECOND DEFENSE

Comes now the said defendant, and, for its further and second defense to the Bill of Complaint herein filed, alleges:

1. That in the year 1923 the States of Nebraska and Colorado negotiated and executed what is called "South Platte River Compact" between the States of Colorado and Nebraska; that said Compact was approved by the Legislatures of said respective States and by the Congress of the United States.

2. That the South Platte River and the North Platte River form a junction at or near the City of North Platte, Nebraska, and thereby constitute the Platte River; that the principal branches of said Platte River are said South Platte River and said North Platte River.

3. That the effect of said Compact is to segregate said South Platte River from the Platte River and from the North Platte River for the purpose of adjudicating and distributing the waters thereof, and said Compact provides for the adjudication and use of all of the waters of the South Platte River without regard to and without providing for furnishing any water for the use of prior appropriators of the Platte River.

4. That giving consideration to the principle established by the complainant, as a party to said South Platte River Compact, for the purpose of this suit, the waters of the North Platte River should be considered, adjudicated and distributed for use entirely without regard to appropriations made for the use of water from the Platte River.

5. That segregating the North Platte River from the Platte River and adjudicating and distributing the waters thereof for the use of the appropriators of waters from said North Platte River, according to priorities of applications to appropriate and appropriation and use, the said complainant has at all times received from said river, and said defendant has permitted to flow from its boundaries into the boundaries of said complainant, the full share and portion of the waters of said stream to which the appropriators residing in the State of Nebraska are entitled, and sufficient water to supply the amount to which such approp-

riators are entitled in full accord and compliance with their respective priorities.

6. That in truth and in fact said complainant is receiving the full share of the waters of the North Platte River and in the order of priorities to which it is entitled.

7. That said defendant is reliably informed and believes, and, upon such information and belief, alleges that if the relief prayed for by the complainant in this action should be granted, approximately 400,000 acres of the irrigated lands located in the State of Nebraska will be irreparably injured and damaged.

8. That all of the waters of the North Platte River which were then unappropriated were, on December 6, 1904, fully and completely appropriated by the Secretary of the Interior for the purpose of reclaiming and developing public lands in the States of Wyoming and Nebraska; that, pursuant to such appropriation, the Bureau of Reclamation of the United States has continuously and annually proceeded with the reclamation and development of such lands, and said appropriation of December 6, 1904, has at all times been in full force and effect, and that none of the appropriations referred to in the Bill of Complaint herein as having been made for the use of the waters of the North Platte River, in the State of Nebraska, since December 6, 1904, have any priority over the appropriation of said water by the Secretary of the Interior of the United States, and all such appropriations, if any exist, are junior and inferior to the appropriation of the Secretary of the Interior of the United States, and there is no water of the North Platte River which is subject to adjudication or distribution pursuant to any appropriation subsequent to December 6, 1904; that all appropriations for the use of the waters of the North Platte River, in the State of Wyoming, made prior to December 6, 1904, have at all times received the use of the full amount of the water of said river, to which they are entitled in the order of their respective priorities.

III.

THIRD DEFENSE

Comes now said defendant, and, for its third separate defense to the Bill of Complaint herein filed;

1. Admits the allegations of the First Paragraph of said Bill of Complaint and admits all of the allegations of the Second Paragraph of said Bill of Complaint, except that said defendant denies that Exhibit A, referred to in said paragraph, and attached to said Bill of Complaint, as a part thereof, is a map of the area described in the Second Paragraph of said Bill of Complaint.

2. Answering the Third Paragraph of said Bill of Complaint, said defendant admits that the drainage area of said North Platte River in Wyoming is approximately 22,400 square miles, and denies that the drainage area of the North Platte River in Nebraska is 13,000 square miles, and alleges that there is no drainage area of the North Platte River in Nebraska east of the junction of the North Platte River with the South Platte River at or near the city of North Platte, in Nebraska. Said defendant admits that in any normal year the period of least rainfall in the area involved in this action is in the months of July, August and September, and that the need of water for crops grown on the land adjacent to and using waters of the North Platte River during said months of July, August and September is great and admits that the water used for irrigation from the North Platte River and the Platte River originates chiefly in the upper part of the North Platte Basin in Colorado and Wyoming, and said defendant denies each and every other allegation contained in the Third Paragraph of said Bill of Complaint as fully and completely as though each of said allegations were herein repeated and denied.

3. Answering the Fourth Paragraph of said Bill of Complaint, said defendant denies that any irrigation system was constructed in the State of Nebraska for the purpose of using the waters of the North Platte River in the year 1882, or for several years thereafter, and said defendant admits that since the use of the waters of the North Platte River in the State of Nebraska was first commenced it has gradually increased, and the amount of water from said stream used for irrigation purposes in the State

of Nebraska has increased until there is a large area of land located in the State of Nebraska which derives its source of supply of water from the North Platte River, and said defendant alleges that approximately all of the lands in the State of Nebraska which are irrigated by waters of the North Platte River would be injured and irreparably damaged if said complainant should be adjudged to be entitled to the water which it claims in its Bill of Complaint. Said defendant denies each and every allegation contained in said Fourth Paragraph of said Bill of Complaint which is not herein specifically admitted and specifically denies that said defendant has committed any wrongful acts with reference to the use of the waters of the North Platte River.

4. Answering the Fifth Paragraph of said Bill of Complaint, said defendant denies that the agricultural production of the area described in said paragraph has been based upon irrigation for more than forty-five years, and, with reference to the remaining allegations of said paragraph, said plaintiff states that it does not have information with reference thereto sufficient to form the basis of a belief and therefore denies each and every other allegation in said paragraph contained to the same extent and as fully as though each of said allegations were herein specifically and serially denied.

5. Answering the Sixth Paragraph of said Bill of Complaint, said defendant admits the allegations thereof, which are set forth on Pages 12, 13 and 14 of said Bill of Complaint, and admits the allegations of said paragraph set forth on Page 1 of said Bill of Complaint, except that said defendant denies the allegations set forth on said Page 15, "That prior to such 1895 legislation, such doctrine was for all practical purposes in force in said area."

6. Answering the Seventh Paragraph of said Bill of Complaint, said defendant admits that the "doctrine of appropriation as recognized and in force both in the States of Wyoming and Nebraska, has at all times been based upon the principle that he who first initiated an appropriation, diverted the waters and applied the same to beneficial use should have a prior right to the same as of the time when the project was initiated", and said defendant admits that said doctrine was recognized and applied in Wyoming prior to 1895, but denies that said doctrine was recognized or applied in the State of Nebraska prior to 1895, and said defendant admits that the legislation in the State

of Nebraska and mentioned in said paragraph has provided for the administration of the water of the North Platte River in the State of Nebraska since said legislation was adopted in said State and denies each and every other allegation in said paragraph contained.

7. Answering Paragraph Eight of said Bill of Complaint, said defendant admits the allegations thereof.

8. Answering Paragraph Nine of said Bill of Complaint, the defendant admits "That the purpose of such storage as declared by said act of Congress and as declared in the requests filed for permit to store, were for the purpose of impounding and making available waters not otherwise needed for direct irrigation, and the preservation of such waters until such time as they were needed", and said defendant admits "That all of the acts of the United States Bureau of Reclamation in operating said reservoirs, in impounding waters, and filling the same, and in releasing such waters, are subject to the authority of the State of Wyoming, defendant herein", and that the officers of said defendant are charged with the duty of administering such waters fairly and impartially and are charged with the duty of preventing appropriators with junior rights from taking waters which are required by appropriators with senior rights, and said defendant denies each and every other allegation in said paragraph contained as fully and completely as though each of such allegation was set forth herein and specifically denied.

9. Answering the Tenth Paragraph of said petition, said defendant admits that the parties to this suit have from time to time issued permits and adjudicated priorities for the diversion of waters from the North Platte River, and that since 1895 they have applied substantially the same rule of priority, and admits that when an irrigation project is completed, in compliance with the laws of either of said parties, priority in time of appropriation gives priority of right, and said defendant admits that said complainant has demanded that said defendant release and permit to flow into the State of Nebraska more waters than said defendant did release, and said complainant at all times knew that said defendant did not release more waters to complainant and has been fully apprised of such fact for a period of twenty-five years or more, and said defendant denies each and every other allegation in said paragraph of said Bill of Complaint contained, as fully

and completely as though said allegations were herein set forth and denied.

Further answering said Paragraph Ten of said Bill of Complaint, said defendant alleges that under date of December 6, 1904, the Secretary of the Interior of the United States made filings for the appropriation of all of the then unappropriated waters of the North Platte River, such filings being made pursuant to the act of Congress of 1902, known as the Reclamation Act, and said filings were made in the offices of the State Engineer of the State of Wyoming in compliance with the laws of said State; that by making said filings, said Secretary of the Interior of the United States gave notice of his intention to reclaim and develop the arid lands of the United States, located in the States of Wyoming and Nebraska, and subject to reclamation and development by the use of the waters of the North Platte River; that pursuant to said filings, and in compliance with the laws of the State of Wyoming, the Bureau of Reclamation of the United States has proceeded to develop and reclaim the public lands of the United States, situate in the States of Wyoming and Nebraska, and to develop the irrigation works necessary so to do, and, in such development, said Bureau of Reclamation has required and demanded that all waters of the North Platte River not appropriated prior to December 6, 1904, be allocated to said Bureau of Reclamation for use pursuant to its said filings; that by making said filings of December 6, 1904, the Secretary of the Interior gave notice of the intention to reclaim the arid lands of the United States, as aforesaid, and by proceeding with the construction of the necessary irrigation works and the development and reclamation of said lands, acting through the Bureau of Reclamation, the Secretary of the Interior has become entitled to and is entitled to all of the waters embraced in his filings of December 6, 1904, for the purposes aforesaid.

Further answering the allegations of said paragraph of the Bill of Complaint, said defendant alleges that from time immemorial and until the development of irrigation from the North Platte River in Wyoming, said river was known as a "disappearing river", and, during the months of July, August and September, the flow of said river disappeared into the sands practically all of the way from the Nebraska-Wyoming state line to the junction of said river with the South Platte River at or near the city of North Platte, Nebraska, and the Platte River was frequently dry as far east as Fort Kearney, Nebraska, during

said months; that, because of the development of irrigation in the State of Wyoming, near the head waters of said stream, and throughout the reaches of said stream in said State, a large return flow of water has been developed, and such return flow is the water of said defendant and subject to use by said defendant in conformity with its laws.

10. Answering Paragraph Eleven of said Bill of Complaint, the defendant admits that the United States Bureau of Reclamation plans to construct the Seminoe Reservoir and Casper-Alcova irrigation projects, as alleged in said Bill of Complaint, and intends to impound the waters of the North Platte River in said Seminoe Reservoir and to use waters of the North Platte River and from said Seminoe Reservoir for the purpose of developing and irrigating the lands embraced within the Casper-Alcova irrigation projects, and admits that for the purpose of diverting the waters necessary for the irrigation of the lands embraced in the Casper-Alcova projects, it is necessary to construct and maintain a diversion dam which will contain and retain water in dead storage at all times when waters are being used upon said Casper-Alcova irrigation projects.

Said defendant admits that the Seminoe Reservoir, when constructed, will have a storage capacity of approximately 1,000,000 acre feet of water, and said defendant denies each and every other allegation in said paragraph of said Bill of Complaint as fully and completely as though each of said allegations were herein set forth and specifically denied, and said defendant denies that it has administered or intends to administer the waters of the said North Platte River in any manner other than in compliance with its laws and the rights of those who are entitled to priority of use of said waters.

11. Answering the Twelfth paragraph of said Bill of Complaint, said defendant admits that much of the land in Nebraska, which is at present under cultivation, by use of the waters of the North Platte River, is fertile and highly productive, and admits that much of said land has been improved by valuable improvements erected upon the farms of residents in said area.

Further answering said paragraph of said Bill of Complaint, said defendant denies each and every other allegation therein contained as fully and completely as though each allegation were herein set forth and specifically denied.

12. Answering the Thirteenth paragraph of said Bill of Complaint, said defendant admits that a considerable portion of the lands which are subject to irrigation under the Pathfinder and Guernsey Reservoirs are situate in Nebraska, and admits that the said reservoirs have storage rights of a priority of December 6, 1904.

Said defendant further admits that a considerable portion of the lands which are subject to irrigation from the waters of the Pathfinder and Guernsey Reservoirs are chiefly dependent upon said reservoirs for their water supply. Said defendant further admits that some lands which have been reclaimed by waters appropriated from the North Platte River have acquired supplemental rights to the use of the storage waters.

Further answering the allegations of said paragraph of said Bill of Complaint, the defendant denies each and every allegation therein contained, which is not herein admitted, as fully and completely as though said allegations were herein set forth and each specifically denied.

13. Answering Paragraph Fourteen of said Bill of Complaint, said defendant denies each and every allegation therein contained.

14. Answering Paragraph Fifteen of said Bill of Complaint, said defendant denies each and every allegation therein contained.

WHEREFORE, having fully answered, said defendant prays that complainant take nothing in this action, and that the Bill of Complaint be dismissed, and that defendant have and recover its costs herein incurred.

THE STATE OF WYOMING,

By.....

Attorney General of the
State of Wyoming,
Solicitor for Defendant.

THOMAS F. SHEA,
Deputy Attorney General,

WILLIAM C. SNOW,
Assistant Attorney General,
Of Counsel.

THE STATE OF WYOMING
COUNTY OF LARAMIE } ss.

Ray E. Lee, being first duly sworn, upon his oath, according to law, deposes and says: That he is the duly appointed, qualified and acting Attorney General of the State of Wyoming; that as such Attorney General he is the duly authorized solicitor and representative of the defendant named in the foregoing answer; that he has read said answer and knows the contents thereof, and that the facts therein alleged are true except such facts as are alleged upon information and belief and that as to those facts, said affiant verily believes the same to be true.

RAY E. LEE

Subscribed in my presence and sworn to before me this 27th day of May, 1935.

MARGARET TALBOT
Notary Public.